

1 Andrew R. Naylor, OSB No. 07443
2 anaylor@sglaw.com
3 Saalfeld Griggs PC
4 PO Box 470
5 Salem, OR 97308-0470
6 Tel: (503) 399-1070
7 Of Attorneys for Creditor Columbia River Bank

8 UNITED STATES BANKRUPTCY COURT

9 FOR THE DISTRICT OF OREGON

10 In re

11 EUGENE TYRONE ALWINE AND BOBBI LEE
12 ALWINE,

13 Debtors.

Case No. 09-39313-rld13

**COLUMBIA RIVER BANK'S OBJECTION TO
CONFIRMATION**

14 COMES NOW Columbia River Bank (hereinafter "***Columbia River***") and objects to
15 confirmation of the proposed Chapter 13 plan (hereinafter the "***Plan***"), as amended, and filed by
16 Debtors Eugene Tyrone Alwine and Bobbi Lee Alwine (collectively hereinafter the "***Debtors***")
17 on or about November 23, 2009 (***Docket #13***).

18 **BACKGROUND**

19 On or about August 15, 2007, Debtor Bobbi Alwine for value received, duly made,
20 executed, and delivered to Columbia River a certain Note, Disclosure and Security Agreement
21 (hereinafter the "***Alwine Loan***") in the principal sum of \$22,055.00, together with interest
22 accruing at the rate set forth in the Alwine Loan. The Alwine Loan was a executed for the
23 purpose of allowing Debtor Bobbi Alwine to purchase a certain 2005 Ford Truck F150 Supercab,
24 VIN 1FTPX145X5NA15718 (hereinafter the "***2005 Ford***"). The Alwine Loan was for personal,
25 family or household use.

26 As security for repayment of the obligations owing under the Alwine Loan, Debtor Bobbi

1 Alwine executed and delivered to Columbia River, for good and valuable consideration, a certain
2 security agreement and pledging title to the 2005 Ford. Columbia River duly perfected its
3 security interest in the 2005 Ford by having its name recorded on the vehicle's certificate of title.

4 On or about March 24, 2008, 9-Mile Construction & Excavation, Inc. (hereinafter "**9-**
5 **Mile**"), an entity owned and operated by Debtor Eugene Tyrone Alwine, for value received, duly
6 made, executed, and delivered to Columbia River a certain Promissory Note (hereinafter the
7 "**Note**") in the principal sum of \$8,000.00, together with interest accruing at the rate set forth in
8 the Note.

9 As security for repayment of the obligations owing under the Note, 9-Mile executed and
10 delivered to Columbia River, for good and valuable consideration, a certain security interest in a
11 1999 Ford Truck F35, VIN 1FTWW33F0XEE66812 (hereinafter the "**1999 Ford**"). Columbia
12 River duly perfected its security interest in the 1999 Ford by having its name recorded on the
13 vehicle's certificate of title. Debtors have proposed to pay the Note in full pursuant to the terms
14 and conditions of the proposed Plan. Columbia River does not object to Debtors' proposed
15 treatment of this obligation.

16 POINTS AND AUTHORITIES

17 **A. Debtors' Plan Fails to Provide for Columbia River's Secured Claim**

18 Debtors' Plan violates the "hanging-paragraph" provisions of 11 U.S.C. § 1325(a) by not
19 properly providing for CRB's claim under the Alwine Loan. Pursuant to 11 U.S.C. § 1325(a):

20 For purposes of paragraph (5), section 506 shall not apply to a claim described in
21 that paragraph if the creditor has a purchase money security interest securing the
22 debt that is the subject of the claim, the debt was incurred within the 910-day [sic]
23 preceding the date of the filing of the petition, and the collateral for that debt
24 consists of a motor vehicle (as defined in section 30102 of title 49) acquired for
the personal use of the debtor, or if collateral for that debt consists of any other
thing of value, if the debt was incurred during the 1-year period preceding that
filing.

25 Here, the Alwine loan was incurred within 910-days from the date of the petition filing.
26 The Alwine Loan was acquired for Debtor Bobbi L. Alwine's personal use. The Alwine Loan

1 was incurred to allow Debtor Bobbi L. Alwine to purchase the 2005 Ford. To secure repayment
2 of the Alwine Loan, Debtor Bobbi L. Alwine granted Columbia River a security interest in the
3 2005 Ford. Therefore, Columbia River has a purchase money security interest in the 2005 Ford.
4 Debtors' proposed Plan fails to adequately provide for Columbia River's claim under the Alwine
5 Loan. As such, it is in violation of 11 U.S.C. § 1325(a) and should be amended accordingly.

6 **B. Reservation of Further Objections.**

7 Columbia River expressly reserves the right to raise additional objections to the Plan at
8 the confirmation hearing.

9 **CONCLUSION**

10 For the reasons discussed above, this Court should deny confirmation of Debtors'
11 proposed Plan.

12 Dated this 11th day of January, 2010.

13 **SAALFELD GRIGGS PC**

14 By /s/ Andrew R. Naylor

15

ANDREW R. NAYLOR, OSB #07443
16 Of Attorneys for Creditor Columbia
17 River Bank
18
19
20
21
22
23
24
25
26

1 Andrew R. Naylor, OSB No. 07443
anaylor@sglaw.com
2 Saalfeld Griggs PC
3 PO Box 470
Salem, OR 97308-0470
4 Tel: (503) 399-1070
Of Attorneys for Creditor Columbia River Bank
5

6 UNITED STATES BANKRUPTCY COURT

7 FOR THE DISTRICT OF OREGON

8 In re

9 EUGENE TYRONE ALWINE AND BOBBI LEE
10 ALWINE,

11 Debtors.
12
13

Case No. 09-39313-rld13

CERTIFICATE OF SERVICE

14 I hereby certify that on the 11th day of January, 2010, I served a certified true copy of the
15 **COLUMBIA RIVER BANK'S OBJECTION TO CONFIRMATION**, and supporting documentation, by
16 electronic means through the Court's Case Management/Electronic Case File system, which will
17 send automatic notification of filing to each registered user of such system. According to the
18 system, this includes:

- 19 • PATTI H BASS ecf@bass-associates.com
20 • Brian D. Lynch c0urtmai1@portland13.com, c0urtmai1@portland13ct.com
21 • ANDREW R NAYLOR anaylor@sglaw.com, epaetsch@sglaw.com
22 • TODD TRIERWEILER ore cf@bankruptcylawctr.com, ore cf@whiz.to
23 • US Trustee, Portland USTPRegion18.PL.ECF@usdoj.gov
24 • JAMES ^MIERSMA ecfor@rcflegal.com

25 I further certify that on the 11th day of January, 2010, I served copies of the foregoing
26 documents on the following persons:

1 by mailing a true and correct copy to the last known address of each person listed. It was
2 contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with
3 the US Postal Service in Salem, Oregon.
4

5 Dated this 11th day of January, 2010.

6 **SAALFELD GRIGGS PC**

7 By /s/ Andrew R. Naylor

8

ANDREW R. NAYLOR, OSB #07443
9 Of Attorneys for Creditor Columbia
10 River Bank
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26